

AF ^{EW}




IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In Re: Application of: Toshikatsu Ito)
Serial No.: 09/828,567)
Filed: April 9, 2001)
IMPROVED ANCHOR BOARD)

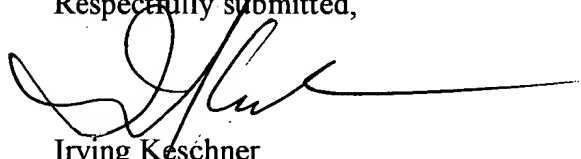
This correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on December 30, 2004.

Name of applicant, assignee or Registered Representative: Irving Keschner


Signature
Date: December 30, 2004

Responsive to the Notice of Non-Compliant Appeal Brief dated December 20, 2004, please find enclosed, in triplicate, a complete new brief in compliance with 37 CRF 41.37(c).

Respectfully submitted,



Irving Keschner
Attorney for Applicant
Reg. No. 24,547
December 30, 2004

Patents/Ito.appealbrf.4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In Re: Application of: Toshikatsu Ito)
Serial No.: 09/828,567)
Filed: April 9, 2001)
IMPROVED ANCHOR BOARD)

This correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on December 30, 2004.

Name of applicant, assignee or Registered Representative: Irving Keschner


Signature
Date: December 30, 2004

APPEAL BRIEF

1. REAL PARTY IN INTEREST

The party identified in the caption of the brief is the real party in interest.

2. RELATED APPEALS AND INTERFERENCES

No prior and pending appeals, interferences, or judicial proceedings are known to Appellant or the Appellant's legal representative which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

3. STATUS OF CLAIMS

Claims 4, 11 and 12 have been finally rejected and are the subject of this appeal. Claims 1-3 and 5-10 have been canceled.

It should be noted that a Notice of Appeal regarding a previous final rejection and the corresponding fee was filed on July 7, 2003; an Appeal Brief and corresponding fee was filed on September 8, 2003. Prosecution of the application was reopened by the examiner and appellant elected to continue prosecution which resulted in the current final rejection; in view of 37 CFR 1.193(b)(2), the previously paid fees will be applied to this appeal.

4. STATUS OF AMENDMENTS

No amendment was filed after the Final Rejection.

5. SUMMARY OF CLAIMED SUBJECT MATTER

As set forth in sole independent Claim 4, the claimed invention provides an improved board anchor 13 having a screw shaft 1, a freely revolving anchor section 2 attached to the screw shaft, a re-positioning device 3 for positioning the anchor section in a cross position against the screw shaft from a position parallel with the screw shaft and a threaded attachment ring 8, the screw shaft screwing into the attachment ring and a formed screw hole 9 in the anchor section.

To anchor a board to a wall, the anchor section 2 is rotated and placed in a parallel position with the screw shaft 1 positioned along a straight line. On one side of the wall, the screw and anchor section are both inserted through the insertion hole 12 in the wall. The anchor section is then rotated toward a cross, or perpendicular, position from its parallel position through the force of a spring 3 when the shaft 1 and anchor section 2

through hole 12, the anchor being stopped in a cross position by a mechanism that comprises the attachment ring 8 and a portion of the anchor section itself. From the same side of the wall, the screw shaft 1 is then pulled back in the opposite direction to the direction of insertion to place the anchor section flush against the other side of the wall. The board is then placed closely against the wall before inserting the screw shaft through a screw hole 9 formed in the board. Finally, a nut 31 is screwed onto the end section of the screw shaft on the board side. The screw is tightened to press the board against the wall, thus anchoring the board to the wall.

As noted above, after the anchor section stops in a cross position to the screw shaft, the screw shaft is screwed into the attachment ring and the screw hole in the anchor section. Since the mechanism has stopped the anchor section in a cross position, the positions of the screw shaft and the screw hole on the anchor section become aligned, thus allowing the screw shaft to easily screw into the anchor section. Since the screw shaft and the anchor section are linked by screw coupling, the device can be used for boards and walls of varied thickness by adjusting the length of the screw shaft through the insertion hole on the wall.

The stopper mechanism 4 comprises trunnions, or protrusions, 8a formed on each end of the attachment ring 8, and shaped adjustment holes 7 formed on the anchor section and linked to the trunnions 8a as shown in Figures 2 and 3. The shaped holes are designed to consistently stop the trunnions in a manner to secure the anchor section in the cross position (page 7, lines 1-17 of the specification).

Although toggle bolts have been available in the prior art for many years as evidenced by the prior art cited by the examiner, it is believed that the board anchor set

forth in the appealed claims define a board anchor that provides significant advantages thereover and warrants patent protection.

Dependent claims 11 and 12 further define specific aspects of the stopper mechanism as shown in Figures 2 and 3 and described on page 7, line 1-17 of the specification.

6. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claim 4 is unpatentable over Newhall et al (US 1179449) in view of Karitzky (US 1374924) and Place (US 2144895). Whether claims 11 and 12 are unpatentable over Newhall (US 1179449) and in view of Karitzky (US 1374924) and Place (US 2144895) as applied to claim 4 and further in view of Newhall (US 1084289).

7. ARGUMENT

WHETHER CLAIM 4 IS UNPATENTABLE OVER NEWHALL ET AL IN VIEW OF KARITZKY AND PLACE UNDER 35U.S.C. 103(a)

Although Newhall et al (1179449) discloses a toggle bolt, the construction of the toggle bolt differs substantially from that set forth in independent claim 4. In particular, Newhall et al does not disclose the equivalent of attachment ring 8 set forth in claim 4, the attachment ring having two important functions. First, attachment ring 8 enables the position of screw shaft 1 and screw hole 9 in anchor section 2 to be aligned making it easier to screw shaft 1 into screw hole 9. Secondly, attachment ring 8 includes protrusions (trunnions) 8a that together with the shaped openings 7 formed on the anchor section sides function to lock the anchor head into the horizontal position after exiting the rear surface of the mounting wall.

A further feature of the board anchor set forth in claim 4 is that coupling of the screw shaft 1 with the anchor section 2 (when the anchor section is in the horizontal position) increases the anchoring strength and, in addition, allows the screw shaft 1 to be removed if necessary. The Newhall et al toggle bolt has none of the above features.

The examiner characterizes Newhall's nut 5 as a component identical to appellant's attachment ring 8. However, it is clear that Newhall's nut 5 is not structurally or functionally the same as the attachment ring 8. In particular, the Newhall et al toggle bolt (and the similar one disclosed in Patent No. 1,084,289 to Newhall) is designed such that the head 4 of stem 3 or nut 5 can be mounted within the toggle bolt head 2 interchangeably and, according to the inventor, enables either the nut 5 or head 4 to be left on the exterior of the supported article. In either arrangement, the nut 5 is not adapted to be used as an attachment ring having the features set forth in appealed claim 4.

Karitzky discloses a toggle having a hinge member of various shapes, the invention being directed to having a hinge member which is not permanently secured to the toggle head. Although the hinge members have ends that may be equivalent to protrusions, the function and design of the Karitzky toggle is completely different from what is set forth in applicant's claim 4 and, more importantly, does not suggest that Newhall can be modified to utilize its teachings to make the claim obvious.

Although Place discloses a toggle bolt having an anchor section with an elongated portion 6 with a threaded opening 4, there is no suggestion that the primary Newhall et al reference could be modified to incorporate these features of Place without the use of hindsight. Specifically, the toggle bolt of Newhall et al is designed not to be attached to the toggle bolt head 2 so that either a nut 5 or head 4 could be utilized to engage the face of article 11; Place is designed solely for a threaded screw or bolt 22 having a specific

head design 24 such that, once engaged, the screw can tightly engage the opening and hold the toggle 2 in place.

The Court of Appeals for the Federal Circuit has consistently held, on the question of obviousness under 35 U.S.C. 103, that evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to modify the teaching of the references relied on to reject the claimed invention is necessary. See In re Lee, 61 USPQ2d 1430, 1433 (CAFC 2002); Srbia Neurosciences Inc. v. Cadus Pharmaceutical Corp., 55 USPQ2d1927, 1931 (CAFC 2000).

It is believed that the examiner has not established that there is teaching, motivation or suggestion that the Newhall '449 reference could be modified by Kartizky and Place to meet applicant's claim 4 without the use of hindsight.

WHETHER CLAIMS 11 AND 12 ARE UNPATENTABLE OVER NEWHALL ('449) ET AL IN VIEW OF KARITZKY AND PLACE AND FURTHER IN VIEW OF NEWHALL ('289)

Since claims 11 and 12 are dependent on claim 4, the reasons set forth hereinabove for the inapplicability of the Newhall '449, Karitzky and Place references are applicable to claims 11 and 12. Further, dependent claims 11 and 12 set forth the specific features of the attachment ring protrusions and the anchor section shaped openings that enable the attachment ring to both function as a mechanism for stopping the anchor section in the cross position and to align the threaded openings in the attachment ring and the anchor section. The Newhall toggle bolt disclosed in '289 patent is similar to the one set forth in Newhall '449 as discussed hereinabove; Place does not disclose the attachment ring/shaped openings feature, a key aspect of applicant's invention. Thus, these references, when combined in the manner suggested by the examiner, would not

disclose the inventive concept claimed by appellant; an attachment ring, when used in conjunction with the anchor section, provides alignment and stop features simply and efficiently.

The reasoning set forth in the In re Lee and Srbia Neurosciences decisions noted hereinabove are equally applicable to the rejection of claims 11 and 12. Specifically, examiner has not established that there is a teaching, motivation or suggestion that the primary Newhall reference could be modified by the Karitzky, Place and Newhall ('289) references to meet applicant's claims 11 and 12 without the use of hindsight.

In view of the above, it is requested that the Board of Patent Appeals and Interferences reverse examiner's position that claims 4, 11 and 12 are unpatentable under 35 U.S.C.103(a).

8. CLAIMS APPENDIX

4. An improved board anchor for securing a board to a wall member, said wall member having an opening formed therethrough, comprising:

a threaded shaft having a longitudinal axis;

a freely rotating anchor section attached to the screw shaft, said anchor section comprising a base portion and a channel shaped member having spaced apart, downwardly extending flange portions, each flange portion having a shaped opening formed therein, said base portion having an elongated portion with a threaded hole formed therein;

a rotatable attachment ring having first and second protrusions formed on the perimeter of said attachment ring and a threaded hole, said protrusions adapted to engage the corresponding opening formed on said anchor section, said threaded shaft

being threadly coupled to said attachment ring prior to the insertion of said anchor portion within said wall member opening, said attachment ring protrusions and said shaped openings enabling said threaded shaft to be initially positioned substantially parallel to said longitudinal axis within said wall member opening and repositioning the anchor section to a first position substantially perpendicular to said screw shaft longitudinal axis after exiting said wall member opening, said shaped openings and said attachment ring protrusions acting together to lock said anchor section in said first position, said threaded shaft engaging said threaded hole in said anchor section when said anchor section is in said first position, said shaped openings and said attachment ring protrusions functioning to position said anchor section substantially perpendicular to said screw shaft longitudinal axis so that the threaded holes in said attachment ring and said elongated portion of said anchor section are aligned as said threaded shaft is rotated such that a portion of said threaded shaft extends through said aligned holes, said shaped openings limiting the angular rotation of said attachment ring relative to said anchor section to substantially 90°.

11. The board anchor of claim 4 wherein each of said shaped openings are formed by first and second spaced apart protrusions extending into a cavity.

12. The board anchor of claim 11 wherein sufficient space is provided between said first and second protrusions to enable said attachment ring protrusions to extend therebetween, said extending protrusions limiting the angular rotation of said attachment ring protrusions.

9. EVIDENCE APPENDIX

No evidence has been submitted pursuant to 37CFR1.130, 37CFR 1.31 or 37CFR1.132 or by the examiner that appellant has relied on in this appeal.

10. RELATED PROCEEDINGS APPENDIX

Copies of decisions rendered by a court or the Board as per section 2 hereinabove have not been submitted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Irving Keschner', with a long horizontal flourish extending to the right.

Irving Keschner
Attorney for Applicant
Reg. No. 24,547
December 30, 2004

Patents/Ito.appealbrf.3